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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,052

12/16/2004

Masayoshi Tatamoto

Q84889

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23373 7590 05/21/2009  
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EXAMINER

KOLLIAS, ALEXANDER C

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/518,052	<b>Applicant(s)</b> TATEMOTO ET AL.	
	<b>Examiner</b> ALEXANDER C. KOLLIAS	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/17/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-10, 37, 38 and 51-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 37-38 and 51-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090417</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. All outstanding claims objections and 35 USC 112, 2nd paragraph rejections are withdrawn in light of applicant's amendment filed on 4/17/2009.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. No new grounds of rejection are set forth below. Thus, the following action is properly made final.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 8-10, 38, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Grot (US 4,433,082).

The rejection is adequately set forth in paragraph 4 of the Office Action mailed on 11/17/2008 and is incorporated here by reference.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 8, and 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekiarian et al (US 2004/0167289) and Doyle et al (US 6,140,436) and as evidenced by Odian (*Principles of Polymerization*, see attached pages).

The rejection is adequately set forth in paragraph 8 of the Office Action mailed on 11/17/2008 and is incorporated here by reference.

8. Claims 9-10 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekiarian et al (US 2004/0167289) and Doyle et al (US 6,140,436) as evidenced by Odian (*Principles of Polymerization*, see attached pages) as applied to claims 8, and 51-56 above and further in view of Grot (US 4,433,082).

The rejection is adequately set forth in paragraph 9 of the Office Action mailed on 11/17/2008 and is incorporated here by reference.

9. Claims 37, and 57- 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekiarian et al (US 2004/0167289) in view of Doyle et al (US 6,140,436).

The rejection is adequately set forth in paragraph 10 of the Office Action mailed on 11/17/2008 and is incorporated here by reference.

### ***Response to Arguments***

10. Applicant's arguments filed 4/17/2009 have been fully considered but they are not persuasive.

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11. Applicant argues that Grot does not teach spherical polymeric particles but that the polymeric particles are in a variety of forms such as fluff, cubes, tubing, etc. Although the part of the reference pointed to by Applicant to is drawn to the form of the polymer employed in the process, Col 4, Lines 40-55 and Lines 62-67 disclose aqueous techniques for preparing the copolymer which include contacting monomer with an aqueous medium containing a free-radical initiator to obtain a slurry of polymer particles in granular form. Furthermore, it is noted that Applicant's have not provided evidence to the contrary, i.e., that the process disclosed by the reference results in polymer particles which are non spherical. It is noted that "the arguments of counsel cannot take the place of evidence in the record", *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). It is the Examiner's position that the arguments provided by the applicant regarding the shape of the polymeric particles taught by Grot must be supported by a declaration or affidavit. As set forth in MPEP 716.02(g), "the reason for requiring evidence in a declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 24 and 18 U.S.C. 1001".

12. Applicant argues that Bekiarian in view of Doyle and as evidenced by Odian does not disclose that the particles are spherical. However, it is noted that the Bekiarian discloses a process of emulsion polymerization to obtain the polymeric particles which as evidenced by Odian discloses the shape and size of particles produced by such as process. Odian does not limit the emulsion polymerization process to soluble monomers as alleged by Applicant, e.g. water soluble monomers such as vinyl acetate and styrene. It is noted that styrene, disclosed by Odian as part of the monomers which may be emulsion polymerized is not a water soluble

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monomer. Furthermore, regarding emulsion polymerization as taught by Bekiarian and as evidenced by Odian, by Applicant's own admission on Page 9, Lines 30-35, Page 13, Lines 2-6 and Page 27 Lines 19-32, disclose that the fluoropolymer solid compositions comprising spherical fluoropolymer fine particles can be prepared from a dispersion obtain by emulsion polymerization. Furthermore, it is noted that "the arguments of counsel cannot take the place of evidence in the record", *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). It is the Examiner's position that the arguments provided by the applicant regarding the polymeric particles taught by Bekiarian must be supported by a declaration or affidavit. As set forth in MPEP 716.02(g), "the reason for requiring evidence in a declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 24 and 18 U.S.C. 1001".

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER C. KOLLIAS whose telephone number is (571)-270-3869. The examiner can normally be reached on Monday-Friday, 8:00 AM -5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. C. K./  
Examiner, Art Unit 1796

/Vasu Jagannathan/  
Supervisory Patent Examiner, Art Unit 1796